

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: AFTERMARKET FILTERS
ANTITRUST LITIGATION

:
: Master Docket No. 08-cv-4883
: MDL Docket No. 1957
:
: Judge Robert W. Gettleman

This Document Relates to
All Direct Purchaser Actions

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**DIRECT PURCHASER PLAINTIFFS', INDIRECT PURCHASER PLAINTIFFS', AND
THE STATE OF FLORIDA'S JOINT RESPONSE TO DEFENDANTS'
SUPPLEMENTAL STATUS REPORT REGARDING CLOSING OF GRAND JURY
PROCEEDINGS**

Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, and the State of Florida hereby submit their joint response to Defendants' Supplemental Status Report Regarding Closing of Grand Jury Proceedings (Dkt. No. 376).

The Department of Justice's ("DOJ") decision to close its investigation into the replacement auto filters industry is legally irrelevant. As Judge Posner wrote for the Seventh Circuit in reversing summary judgment for the defendants in *In re High Fructose Corn Syrup Antitrust Litigation*, 295 F.3d 651 (7th Cir. 2002), the government's decision not to prosecute does not allow the beneficiary to argue by inference that the DOJ concluded that there was no conspiracy: "[Defendant ADM cannot] show that because the Justice Department has not moved against the alleged HFCS [High Fructose Corn Syrup] price-fixing conspiracy, there must not have been one. The Justice Department has limited resources; in the entire decade of the 1990s, it brought fewer than 200 civil antitrust cases, an average of fewer than 20 per year. It brought more criminal antitrust cases, but the evidence in this case probably is not strong enough to

establish the defendants' guilt beyond a reasonable doubt. . . . It may also have felt that the antitrust class action bar had both the desire and the resources to prosecute such a suit vigorously, as indeed it has done.” *Id.* at 664-65.

Accordingly, the DOJ’s decision does not affect this litigation.

Dated: January 25, 2010

Respectfully submitted,

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